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VIA HAND DELIVERY

November 1, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Toll Free Service Access Codes, CC Docket
No. 95-155.

Dear Mr. Caton:

Enclosed please find one original and four copies of initial comments filed on behalf of Telemation International, Inc. in the above referenced docket. In addition, I have enclosed a "stamp and return" copy to confirm our receipt.

Thank you for your attention.

Respectfully,

Victoria A. Schlesinger
Regulatory Attorney

Enclosures
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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)	CC Docket No. 95-155
Toll Free Service)	
Access Codes)	
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COMMENTS OF TELEMATION INTERNATIONAL, INC.

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Date: November 1, 1995

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF TELEMATION INTERNATIONAL, INC.

Telemation International, Inc. pursuant to Section 1.405 of the Commission's Rules respectfully submits these initial comments in response to the Notice of Proposed Rulemaking¹ ("NPRM") issued on October 5, 1995 in the above-referenced docket. Telemation International, Inc. ("Telemation") is a Delaware corporation providing billing and collection services in the information services industry. Telemation offers the following comments on issues affecting toll free service access codes and the various Commission proposals contained in the NPRM.

I. JURISDICTION

Pursuant to Title II of the Communications Act of 1934, the Commission has jurisdiction over the activities of common carriers. In its NPRM, the Commission notes that Title II "confers upon the Commission responsibility for regulating the activities of those entities engaged in the provision of common

¹Notice of Proposed Rulemaking, In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, FCC 95-419 (Oct. 5, 1995) (hereinafter NPRM).

carrier services."² Consequently, there is little doubt that the Commission has the proper authority to regulate a common carrier's use of toll free numbers. As the Commission noted in its NPRM, toll free numbers constitute a limited public resource³ of great value to businesses in the areas of customer service and telemarketing.⁴ The Commission, therefore, can and should promote the fair and efficient use of toll free numbers in accordance with its Title II jurisdiction.

A question arises, however, as to whether the Commission has the jurisdiction necessary to regulate the activities of those entities not engaged in the provision of common carrier service. Telemation agrees with the Commission's presumption of ancillary jurisdiction pursuant to Title I of the Communications Act.⁵ As the Commission stated in its order detariffing billing and collection services, the fact that an activity "is not a common carrier communication service for purposes of Title II does not automatically compel the conclusion that [the Commission] should terminate existing regulation of that activity or refrain from imposing other forms of regulation."⁶ The Commission may,

²NPRM, supra note 1, ¶12.

³See NPRM, supra note 1, ¶1 (discussing the rapid depletion of toll free numbers).

⁴NPRM, supra note 1, ¶1 & n.2.

⁵NPRM, supra note 1, ¶12.

⁶Report and Order, In the Matter of Detariffing of Billing and Collection Services, CC Docket No. 85-88, FCC 86-31, ¶35 (Jan. 29, 1986) (describing the Commission's ancillary jurisdiction found under Title I of the Act).

therefore, indirectly regulate parties who are not common carriers under the Communications Act.

Pursuant to the Commission's Title II jurisdiction⁷ and/or the Commission's ancillary jurisdiction,⁸ the Commission must act to insure that 800 toll free numbers are "allocated on a fair, equitable, and orderly basis."⁹ This jurisdiction allows the Commission to exercise its regulatory and enforcement authority over the various business entities involved in access code distribution and use.

II. ASSIGNMENT AND RESERVATION

a. Availability of Toll Free Numbers

Telemation supports the Commission's numerous proposals pertaining to the availability of toll free numbers. Clearly, the liberal assignment of toll free numbers does not serve the public interest since it allows Responsible Organizations ("RespOrgs") and 800 Service Providers to obtain a toll free number prior to receiving any subscriber request. As the Commission noted in its NPRM, this liberal distribution approach often results in the wasting of a valuable resource.¹⁰ The Commission, therefore, should require that a RespOrg or 800 Service Provider submit evidence of an affirmative request for a

⁷47 U.S.C. § 201.

⁸47 U.S.C. §§ 152(a), 153(a), 154(i).

⁹NPRM, supra note 1, ¶1.

¹⁰See e.g., NPRM, supra note 1, ¶13 n.35 (discussing a situation in which toll free numbers were assigned without a request from subscribers).

toll free number prior to receiving that number. The implementation of a rule requiring a request would assist the Commission in the efficient distribution of toll free numbers since it would prevent the assignment of numbers to subscribers who have not requested them and therefore have little or no intention of using them.

Specifically, the Commission should require that a requesting party provide supporting documentation of the subscriber request. Such documentation should also be retained by the requesting party in order support the assignment request subsequent to the actual assignment. Accordingly, Telemation supports the Commission's proposal concerning document retention for auditing purposes.¹¹

b. Escrow Requirement

Yet another proposal contained in the NPRM would require a one time deposit into an escrow account in order to reserve a toll free number.¹² The Commission reasoned that such a requirement would deter parties from warehousing toll free numbers.¹³ Although the Commission's proposal is attractive, a closer analysis of the escrow requirement reveals that such an account would be difficult to implement and maintain given the volume of numbers assigned.

¹¹NPRM, supra note 1, ¶13.

¹²NPRM, supra note 1, ¶14.

¹³NPRM, supra note 1, ¶14.

In addition, a one time deposit may be only moderately effective in discouraging parties from reserving numbers for future use. Regardless of whether the RespOrg, 800 Service Provider or subscriber is ultimately responsible for such a payment, the dollar amount determined by the Commission must be extremely high in order to influence the current reservation patterns of larger businesses.¹⁴ In addition, by requiring a large dollar amount to be held in escrow, the Commission may find that such a deposit is too burdensome for smaller companies requesting toll free numbers. It would be extremely difficult, therefore, for the Commission to establish an escrow amount which would be both effective and equitable.

Consequently, Telemation does not support the implementation of an escrow requirement since the difficulties associated with its implementation greatly outweigh the benefits contemplated by the Commission.

c. The Reservation Process

The Commission also requested comments on a number of issues and proposals regarding the reservation and distribution of toll free numbers.¹⁵ Telemation would support a codification of the current toll free number reservation process which distributes toll free numbers on a first come first served basis. As the

¹⁴A small dollar amount requirement would not deter larger companies from warehousing or hoarding numbers since the forfeiture of such would have little financial impact and could be likened to a licensing fee.

¹⁵NPRM, supra note 1, ¶2.

NPRM noted, however, the current system gives larger, more technologically advanced RespOrgs an advantage in obtaining numbers in high demand.¹⁶

Telemation, therefore, would support a different reservation procedure for numbers in high demand, such as "vanity" numbers and familiar access codes such as "555." Because such numbers and codes are a valuable and extremely limited resource, the Commission should distribute such numbers via a lottery system. This form of distribution would avoid the costs and procedures of dispute resolution since it would give all parties an equal chance to obtain a popular number.

In addition, a lottery process would give financially disadvantaged companies an equal opportunity to receive a number in high demand, and hence better their financial standing. In turn, this system would enhance competition, whereas an auction situation or purchasing system would favor larger companies who could essentially outbid their competitors. A lottery, however, gives all participants an equal chance of receiving the commodity sought.

III. ENFORCEMENT MECHANISMS

In addition to the foregoing issues concerning assignment and reservation, the Commission must implement an effective enforcement mechanism in order to insure compliance with new assignment and reservation requirements. Perhaps the most

¹⁶NPRM, supra note 1, ¶23.

effective means by which to achieve this end would be in the financial penalties designated in the Commission's rules.

Moreover, the Commission should require that entities engaged in repeated violations of these regulations be denied the opportunity to participate in the distribution process for a pre-determined period. A drastic penalty of this nature will equally deter all parties from violating Commission rules. A combination of these mechanisms would serve the public interest by ensuring the equitable distribution of toll free numbers.

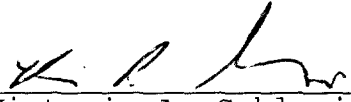
CONCLUSION

For the foregoing reasons, Telemation would support Commission efforts to promote the efficient distribution and use of toll free numbers.

Respectfully submitted,

TELEMATION INTERNATIONAL, INC.

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